



Paper No. 23

OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT P C
1755 JEFFERSON DAVIS HIGHWAY
FOURTH FLOOR
ARLINGTON VA 22202

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OFFICE OF PETITIONS

In re Application of
Ternynck, et al.
Application No. 09/497,997
Filed: February 4, 2000
Docket No. 0660-0166-OX-CONT

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 11, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper reply to the non-final Office action, mailed August 31, 2001, which set a shortened statutory period for reply of three (3) months. An earlier Office action had been mailed on July 31, 2001. However, the Office remailed this action on August 31, 2001 and reset the period for response. On January 31, 2002, petitioner obtained a two month extension of time and filed a Notice of Appeal. However, because the claims had not yet been twice rejected, the Notice of Appeal was not a proper reply. No further extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 1, 2002. The mailing of the instant decision precedes the mailing of a Notice of Abandonment.

Petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of an amendment, paid the petition fee, and made a statement of unintentional delay. 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$520 extension of time fee submitted with the petition on March 11, 2002 was subsequent to the maximum period obtainable for reply (February 28, 2002), this fee has been refunded to Deposit Account No. 15-0030.

In addition, since the filing of a Notice of Appeal on January 31, 2002 was improper, the \$320 for its filing has been refunded to Deposit Account No. 15-0030.

The application file is being forwarded to Technology Center 1600 for consideration of petitioner's amendment, filed March 11, 2002.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.

A handwritten signature in black ink, appearing to read "Cliff Congo". The signature is stylized with a large "C" and a long horizontal stroke.

Cliff Congo
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy